Plaintiff,

10 Civ. 3136 (JGK)

- against -

MEMORANDUM OPINION AND ORDER

JOHN DOE #1, JOHN DOE #2, JOHN DOE #3, RAYMOND KELLY, MICHAEL BLOOMBERG, MICHAEL MORGENTHAU, NEW YORK POLICE DEPARTMENT, NEW YORK CITY HOUSING AUTHORITY, and THE CITY OF NEW YORK,

Defendants.

JOHN G. KOELTL, District Judge:

The defendant, former New York County District Attorney
Robert Morgenthau, moves to dismiss the Complaint against him
pursuant to Rule 12(b)(6) of the Federal Rules of Civil
Procedure, for failure to state a claim upon which relief can be
granted. The Complaint generally complains about an alleged
false arrest on February 12, 2007, and alleged subsequent
malicious prosecution. The motion is granted.

I

On a motion to dismiss pursuant to Federal Rule of Civil

Procedure 12(b)(6), the allegations in the Complaint are

accepted as true. Grandon v. Merrill Lynch & Co., 147 F.3d 184,

188 (2d Cir. 1998). In deciding a motion to dismiss, all

reasonable inferences must be drawn in the plaintiff's favor.

Gant v. Wallingford Bd. of Educ., 69 F.3d 669, 673 (2d Cir.

1995); Cosmas v. Hassett, 886 F.2d 8, 11 (2d Cir. 1989). The

Court's function on a motion to dismiss is "not to weigh the

evidence that might be presented at a trial but merely to

determine whether the complaint itself is legally sufficient."

Goldman v. Belden, 754 F.2d 1059, 1067 (2d Cir. 1985). The

Court should not dismiss the Complaint if the plaintiff has

stated "enough facts to state a claim to relief that is

plausible on its face." Twombly v. Bell Atl. Corp., 550 U.S.

544 (2007). A claim has facial plausibility when the plaintiff

pleads factual content that allows the Court to draw the

reasonable inference that the defendant is liable for the

misconduct alleged. Ashcroft v. Iqbal, 129 S.Ct. 1937, 1949

(2009).

The pleadings and allegations of a pro se plaintiff must be construed liberally for the purpose of a motion to dismiss pursuant to Rule 12(b)(6). See McKithen v. Brown, 481 F.3d 89, 96 (2d. Cir. 2007) (quoting Triestman v. Fed. Bureau of Prisons, 470 F.3d 471, 474 (2d Cir. 2006)); Weixel v. Bd. of Educ. of City of New York, 287 F.3d 138, 145-46 (2d Cir. 2002).

Additionally, the submissions of a pro se litigant should be interpreted to "raise the strongest arguments that they

suggest." Pabon v. Wright, 459 F.3d 241, 248 (2d Cir. 2006)
(quoting Burgos v. Hopkins, 14 F.3d 787, 790 (2d Cir. 1994)).

II

The plaintiff has failed to make any allegations of the personal involvement of District Attorney Morgenthau in any of the events at issue in this case. Indeed, District Attorney Morgenthau is only mentioned in the caption and the list of defendants. Because there are no allegations of the personal involvement on District Attorney Morgenthau, all of the claims against him must be dismissed. See, e.g., Farrell v. Burke, 449 F.3d 470, 484 (2d Cir. 2006); Haygood v. City of New York, 64 F. Supp. 2d 275, 279-80 (S.D.N.Y. 1999).

In addition, the to the extent that the plaintiff was attempting to sue District Attorney Morgenthau in his official capacity, those claims are barred by the Eleventh Amendment.

See, e.g., Rodriguez v. Weprin, 116 F.3d 62, 66 (2d Cir. 1997);

Ying Jing Gan v. City of New York, 996 F.2d 522, 536 (2d Cir. 1993).

Finally, any effort to sue District Attorney Morgenthau in his individual capacity for any role in the prosecution would be barred by absolute prosecutorial immunity. See, e.g., Buckley v. Fitzsimmons, 509 U.S. 259, 273 (1993); Van de Kamp v. Goldstein, 129 S. Ct. 855, 861 (2009); Day v. Morgenthau, 909

F.2d 75, 77 (2d Cir. 1990) (absolute immunity from liability under section 1983); Arteaga v. State, 527 N.E.2d 1194, 1197 n.1 (N.Y. 1988) (absolute immunity from liability under state law).

CONCLUSION

The motion to dismiss the Complaint against former district attorney Morgenthau is therefore granted. The Clerk is directed to close Docket No. 18.

SO ORDERED.

Dated: New York, New York November 30, 2010

John G. Koeltl

Inited States District Judge

¹ It is unnecessary to reach the additional grounds for dismissal asserted by former district attorney Morgenthau.